

PATENT

REMARKS

Claims 1-3 are pending in this application. Claims 1-3 stand rejected.

Claim Rejections under 35 U.S.C. § 103

Claims 1-3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,137,789 to Honkasalo (hereinafter "Honkasalo") in view of U.S. Patent 5,930,230 to Odenwalder et al. (hereinafter "Odenwalder").

Applicants respectfully submit that the rejection of these claims under 103(a) based the above-recited art references are improper because neither Honkasalo nor Odenwalder may not be used as a prior art reference under 103(a), according to section 103(c). Specifically, 35 USC § 103(c) excludes references which may only qualify as prior art under 35 USC § 102(e), (f), and (g) from being used as a prior art reference under 35 USC § 103(a) under certain circumstances. The text of 35 USC § 103(c) recites "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." See 35 USC §103(c), MPEP 706.02(I)(1), 37 CFR §1.104(c)(4).

Odenwalder was issued on July 27, 1999 while the present application was filed on February 14, 2000. However, the present application claims priority to issued U.S. Patent 6,377,809 filed September 16, 1997, which was before the date Odenwalder was issued. Therefore, Odenwalder may only qualify as a prior art reference under 102(e). However, the subject matter of Odenwalder and the claimed present invention were, at the time the invention was made, owned by Qualcomm Incorporated or subject to an obligation of assignment to Qualcomm Incorporated. Accordingly, based on section 103(c), Purnadi may not be used as a prior art reference under 103(a) as a basis for rejecting the present claims under section 103(a). Therefore, Applicants respectfully request that the rejection of the above-recited claims under 35 USC §103(a) be withdrawn.

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Honkasalo also does not qualify as prior art under § 103(c). Honkasalo issued October 24, 2000 while the parent application to which the present application claims priority was filed September 16, 1997.

Therefore, Applicant respectfully requests that the rejections of claims 1-3 based on Honkasalo and Odenwalder be withdrawn.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that the application is in condition for allowance. Accordingly, allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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